THE HON'BLE SHRI JUSTICE R.SUBHASH REDDY

-

WRIT PETITION No. 17626 OF 2002

Between:

M/s. Maruti Engg. & Mill Stores,

Secunderabad

represented by its Partner

Shri K.V.S.Janardhan Murthy.

… Petitioner

And

Bharat Sanchar Nigam Limited,

represented by its General Manager (North)

Hyderabad Telecom District and another.

… Respondents.

ORDER:

This writ petition has been filed by a partnership firm by name M/s. Maruti Engineering & Mill Stores, through its partner Sri K.V.S.Janardhan Murthy seeking a Writ of Mandamus to direct the respondents to restore the telephone connection bearing No.7715438 in the premises bearing Municipal No. 4-3-128, Hill Street, Secunderabad.

Few facts necessary for the disposal of the case are as follows:

One Sri K.Subba Rao, was the allottee of telephone bearing No.7715438 in his individual capacity and the said telephone was originally installed at the premises of the subscriber at 1-8-430/1, Chikkadpally, Hyderabad. Subsequently, on the application made by him, the said telephone was shifted to the present premises viz. 4-3-128, Hill Street, Secunderabad and was being used by the petitioner-partnership firm. The subscriber of the said telephone, Shri K.Subba Rao died and one Shri

K.V.S.Janardhan Murthy, who is son of late K.Subba Rao and is a partner of M/s. Maruti Engineering & Mill Stores, petitioner herein, has been using the said telephone. It is, however, stated that there were no arrears of bills to be paid for telephone No.7715438. A notice was issued by the second respondent calling upon the petitioner to pay an amount of Rs.2,89,073/-, which fell due in respect of telephone No.7630562. It is stated that the petitioner apprised the respondents that telephone bearing No.7630562 does not belong to it and it belongs to one Alivelu Manga Tayaru, daughter of Kala Subba Rao, who had defaulted in payment of the bills and therefore, the petitioner has nothing to do with the said telephone and is not liable to pay the amount demanded in the notice, which is in respect of a telephone not belonging to it and for the default made by the subscriber of telephone bearing No.7630562, petitioner's telephone cannot be disconnected. When the telephone being used by the petitioner was disconnected for non-payment of the bill amount due in respect of telephone No.7630562, the petitioner filed the present writ petition and obtained interim orders for restoration of the telephone being used by it.

In the counter-affidavit filed on behalf of the respondents, it is stated that even the telephone bearing No.7715438 was in the name of Kala Subba Rao, who is no more and the said telephone is in unauthorized use by the petitioner-firm. While raising objection as to the locus of the petitioner to file this writ petition, it is stated that these two telephones viz. 7715438 and 7630562 were installed at the same premises viz. 1-8-430/1, Prabhat Mansions, Chikkadpally, Hyderabad. It is stated that the subscriber of telephone No.7630562, Smt. Alivelu Mangatayaru, is no other than the daughter of late Kala Subba Rao. Though she was married, as per her request, the service was provided at her patrimonial place in Chikkadpally. It is further stated that even in the application filed by her for telephone connection, her nominee is shown as one Janardhana Murthy, who is no other than her brother, who filed the writ petition on behalf of the partnership firm. It is categorically stated that the defaulter's telephone was in unauthorized use at the patrimonial house of the subscriber by her family members till its disconnection due to non-payment of the bill amount due. After having used the telephone of his sister so extensively that within a short period of less than an year its dues went up to Rs.2,89,073/-, the petitioner is trying to evade the payment of the amount due. It is further averred in the counter affidavit that as observed from the STD calls made from the two telephones viz. 7630562 and 7715438, from both telephones calls were made to same number viz. 0885555089, which indicates that both the telephones are being used by one. On

the above grounds, disconnection of telephone No.7715438 for the non-payment of the amount due in respect of telephone No.7630562 is defended by the respondents.

Learned counsel for the petitioner, Shri Madhava Rao, submitted that while the telephone bearing No.7715438 was allotted to Kala Subba Rao at his Chikkadpally residence, and, later on, at his request, it was transferred to the premises where the petitioner-firm is operating its business, telephone bearing No.7630562 was allotted to Smt.Alivelu Mangatayaru and was installed at 1-8-430/1, Chikkadpalli, Hyderabad, and as both are independent subscribers, one telephone cannot be disconnected for the non-payment of dues in respect of the other telephone. The learned counsel makes a reference to the provision contained in Rule 443 of the Indian Telegraph Rules in support of his argument that telephone service provided can be disconnected only in case rent or other charges are not paid by the same subscriber. In support of his argument, learned counsel for the petitioner placed reliance on the judgments in **Y.Pridhvi Kumar v. General Manager, Telecom District, Hyderabad, V.V.Rama Rao v. Union of India, Fakrudheen Ahmed Baramy v. A.O. (T.R.I) Dept. of Telecommunication, T.Abraham v. Telecom District Manager, Kollam, Kailash Prasad Modi v. Chief General Manager, Orissa Telecommunication Mahesh Agarwal v. Union of India**, and an unreported judgment of a Division of this Court in Writ Appeal No.933 of 1995 dated 23.8.1995.

On the other hand, it is submitted by Ms. Chintapudi Lakshmi Kumari, learned counsel for respondents that in this case, petitioner has no locus standi to question the disconnection of telephone bearing No.7715438 inasmuch as the said telephone is being unauthorisedly used by the petitioner as the same is not allotted to the petitioner-partnership firm. It is further submitted that originally two telephones were provided in the same premises bearing No.1-8-430/1, Chikkadpalli, Hyderabad, one obtained by Kala Subba Rao in his individual capacity and another obtained by Alivelu Mangatayaru, who is none other than the daughter of Kala Subba Rao, at her patrimonial place, though she was married by that time. It is submitted that after accumulation of huge arrears, when the telephone No.7630562 was disconnected, on the request of Sri Kala Subba Rao, telephone No.7715483 was transferred to his business place in Ranigunj and the same is also being misused by the petitioner, which is a partnership firm. Therefore, it is submitted that

same people are using both the telephones, which is unauthorized, and their interest is also common and when for non-payment of bill arrears of telephone No.7630562, telephone bearing No.7715438 was disconnected, petitioner had filed this writ petition and obtained interim orders.

From a reading of the provision contained in Rule 443 of the Indian Telegraph Rules, it is clear that the authorities are empowered to disconnect the telephone of the subscriber, in case, bills are not paid. In all the judgments relied on by the learned counsel for the petitioner, this Court and other High Courts have held that for default in payment of bill amounts pertaining to one subscriber cannot be the reason for disconnecting the telephone of other subscriber in the same family. Further, it is also held that on account of service provided to a company or a partnership firm, services provided in individual capacity to individuals cannot be disconnected. There cannot be any second opinion on the propositions laid down in the said cases.

But, the further question which needs to be considered is whether the subscribers of the telephones bearing Nos. 7630562 and 7715438 are independent of each other in their use or are they being used by one person and is there any common interest involved in using the telephones. It is not in dispute that Kala Subba Rao is the original subscriber of telephone bearing No. 7715438 and at the first instance, it was installed at the premises where telephone bearing No.7630562 was installed and from the averments made in the counter affidavit with regard to the dialled numbers in respect of both the telephones, which were found to be one and the same, it is seen that the two telephones were being used for common purpose. The same is further fortified by the fact that during the year 1998, a letter dated 20.5.1998 was received in the office of the respondent purportedly as if the same is addressed by Smt.Alivelu Mangatayaru, on which the signature was not found to be that of Alivelu Mangatayaru and she was asked to submit her passport size photos and attested signatures. The writ petition is filed as if Alivelu Mangatayaru, the subscriber of the telephone bearing No.7630562, is totally alien member not connected with the petitioner. The affidavit on behalf of the petitioner-firm is sworn by one Kala Janardhana Murthy, who is no other than her own brother. In normal course, even if the different subscribers hail from the same family and inter-related, for the default made by one subscriber in respect of his telephone, the other telephone connection of the other member cannot be disconnected. But the facts of this case do not

warrant extending the benefit of the provision contained in Rule 443 of the Indian Telegraph Rules to this case, where the fraudulent conduct on the part of the subscriber is writ large and indicates that different names are used for obtaining connections and for payment of bills to the respondents. That apart, the petitioner is not even a subscriber of telephone bearing No.7715438 and it stands in the name of Sri Kala Subba Rao, and, admittedly, the same is in unauthorized use by the petitioner-partnership firm. Even if the said telephone is disconnected for non-payment of the bill amounts, it can also be said by the petitioner that it is not the subscriber of the said telephone and, therefore, it is not liable for payment of any amounts. The petitioner has, therefore, no locus to file this writ petition for restoration of telephone No.7715438. The benefit of Rule 443 of the Indian Telegraph Rules cannot be extended to cases like this, where there is a design and fraudulent intention on the part of the subscribers for evasion of public revenues. In that view of the matter, I do not find any merit in the writ petition to accept the plea of the learned counsel for the petitioner that inasmuch as there are no arrears on account of the telephone bearing No.7715438, disconnection of the said telephone is illegal.

The writ petition, therefore, is devoid of merits and is accordingly dismissed with costs of Rs.5000/-. The respondents are directed to take immediate and appropriate steps in accordance with the provisions contained in the Indian Telegraph Act and the Rules made thereunder, including for recovery of bills due in respect of the above said telephones.

27--2--2006 **(R.SUBHASH REDDY, J.)**

VR